

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of
ARBITRATION OF DISPUTES

between

LAUNDRY, DRY CLEANING WORKERS AND
ALLIED INDUSTRIES HEALTH FUND, UNITE
HERE! and LAUNDRY, DRY CLEANING WORKERS
AND ALLIED INDUSTRIES RETIREMENT FUND,
UNITED HERE!

07-CV-3542
(CPS)(JO)

Petitioners,

- against -

MEMORANDUM OPINION
AND ORDER

STAINLESS PARTNERS, INC. D/B/A WORLD
CLEANERS,

Respondent.

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In the Matter of
ARBITRATION OF DISPUTES

between

LAUNDRY, DRY CLEANING WORKERS AND
ALLIED INDUSTRIES HEALTH FUND, UNITE
HERE! and LAUNDRY, DRY CLEANING WORKERS
AND ALLIED INDUSTRIES RETIREMENT FUND,
UNITED HERE!

07-CV-3545
(CPS)(RML)

Petitioners,

- against -

MEMORANDUM OPINION
AND ORDER

JUNG SUNG LAUNDRY CORP.,

Respondent.

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SIFTON, Senior Judge.

On August 21, 2007, petitioners Laundry, Dry Cleaning

Workers and Allied Industries Health Fund, UNITE HERE! and Laundry, Dry Cleaning Workers and Allied Industries Retirement Fund, UNITE HERE! ("Petitioners" or "Funds") filed petitions (the "Petitions") against, separately, respondents Stainless Partners, Inc. d/b/a/ World Cleaners (07-CV-3542) and Jung Sun Laundry Corporation (07-CV-3545) ("Respondents"), seeking confirmation of arbitration awards made against each Respondent on July 31, 2007 ("Arbitration Awards"). On October 23, 2007, Petitioners moved for default judgment on the Petitions against each Respondent. Now before this court are the Petitions and Petitioners' motions for default judgment. For the reasons set forth below, the Arbitration Awards are confirmed and the motions for default judgment are denied.

Background

Petitioners are employee benefit plans within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002(3).¹ The Funds were established pursuant to an Agreement and Declaration of Trust and by a Collective Bargaining Agreement entered into between Laundry, Dry Cleaning and Allied Workers Joint Board, UNITE HERE ("Union"), and employers engaged in the cleaning and dyeing industry. The Funds were created to provide benefits to eligible

¹ "The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan. 29 U.S.C. § 1002(3).

employees of contributing employers.

Both Respondents are parties to a Collective Bargaining Agreement and Supplemental Agreement ("CBA") with the Union. The CBA requires each Respondent to contribute to the Funds, based upon stated percentages of its gross payroll and to submit to the Funds premiums on behalf of eligible spouses of employees covered by the CBA.

The Funds allege that Respondent Stainless Partners, Inc. owes contributions to the Funds for the period from June 30, 2007, through July 27, 2007, in the amount of \$4,591.58. The Funds allege that Respondent Jung Sun Laundry Corporation owes contributions to the Funds for the period from June 30, 2007 through July 27, 2007, in the amount of \$30,239.79. The Funds also allege that Respondent Jung Sun Laundry Corporation owes premiums owed on behalf of eligible spouses of covered employees for the period from March 31, 2006 through June 30, 2007, in the amount of \$3,250.00. Pursuant to the CBA, these disputes were referred to arbitration. Prior to arbitration, Petitioners served on Respondents subpoenas directing them to produce their payroll records. Neither Respondent did so.

Separate arbitration hearings were held concerning the disputes with each Respondent on July 31, 2007. Respondents did not appear. At these hearings, Petitioners presented the following evidence:

- a. The provisions of the CBA obligating Respondents to make employee benefit contributions to Petitioners, obligating Respondents to produce books and records, and obligating the parties to arbitrate disputes, including disputes over delinquent employee benefit fund contributions;
- b. The notices of the arbitration hearings, which were served on Respondents on July 11, 2007;²
- c. The subpoenas served on Respondents on July 11, 2007, requesting Respondents to produce all books and records necessary to compute the exact sum owing to Petitioners by Respondents;
- d. Summaries of the delinquent contributions sought in the arbitration, which stated the payroll for the period of delinquency, the contribution rate and the calculation of the delinquent contributions due, interest, liquidated damages, Auditor's fees and costs and legal fees thereon.

Having heard this evidence, and after consideration, the arbitrator made the following awards, directing:

- 1) Respondent Stainless Partners, Inc. to pay the delinquent contributions in the amount of \$4,951.58, plus, based on the Funds' Plan Rules and ERISA Section 502(g)(2)³, interest in the sum of \$42.09, liquidated damages in the sum of \$990.32, Auditor's fees and costs in the sum of \$32.00 and legal fees in the sum of \$100.00, for a total award of \$6,115.99.
- 2) Respondent Jung Sun Laundry Corporation to pay the delinquent contributions in the amount of \$30,239.79, plus, based on the Funds' Plan Rules and ERISA Section 502(g)(2), interest thereon in the sum of \$257.04, liquidated damages in the sum of \$6,047.96, premiums

² Pursuant to the agreements, the parties consented to service by certified mail for any papers, notices or process, including subpoenas, necessary or appropriate to initiate or continue an arbitration or to enforce or confirm an award. All service in this case has been made by certified mail.

³ The relevant text of Section 502(g)(2) is provided in the discussion on Costs and Interest, *infra*.

owed to the Funds in the amount of \$3,250.00 plus interest in the sum of \$364.99, Auditor's fees and costs in the \$32.00, and legal fees in the sum of \$100.00 for a total award of \$40,291.78;

On August 6, 2007, Petitioners served on each Respondent a copy of the respective Arbitration Award by certified mail return receipt requested and regular mail. To date, neither Respondent has satisfied any portion of the awards. On August 21, 2007, Petitioners filed their Petitions to confirm the Arbitration Awards.

This court issued Orders to Show Cause on September 20, 2007, which were served on Respondents by Petitioners on September 21, 2007, directing Respondents to file any papers in opposition to the Petitions by October 3, 2007. Neither Respondent filed any opposition. On October 23, 2007, Petitioners filed motions for default judgment against each Respondent.

Discussion

"[D]efault judgments in confirmation/vacatur proceedings are generally inappropriate." *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 109 (2d Cir. 2006). Instead, a petition to confirm should be "treated as akin to a motion for summary judgment based on the movant's submissions," and where the non-movant has failed to respond, the court "may not grant the motion without first examining the moving party's submission to determine if it has met its burden of demonstrating that no material issue of fact

remains for trial." *Id.* at 109-10 (citation omitted). Thus, I address the merits of the Petitions.

"A motion to confirm . . . an award is generally accompanied by a record, such as an agreement to arbitrate and the arbitration award decision itself, that may resolve many of the merits or at least command judicial deference." *Id.* at 109.

"The petition and accompanying record should [be] treated as akin to a motion for summary judgment based on the movant's submissions" and where the non-movant has failed to respond, a "court may not grant the motion without first examining the moving party's submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial." *Id.* (citation omitted). "Normally, confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court and the court must grant the award unless the award is vacated, modified or corrected." *Id.* at 110 (citations and internal quotation marks omitted).

Petitioners have submitted the arbitrator's decisions in the disputes and the relevant Funds' Plan Rules which provide for arbitration, as well interest, liquidated damages, attorney's fees, audit fees, and costs in the case of delinquency. Further, as exhibits to their motions for default judgment, they have submitted the CBA. The arbitrator's decisions make clear that he

reviewed the CBA, the summaries of the delinquent contributions, the notices of intention to arbitrate, and the July 31, 2007 subpoenas. The arbitrator found that Respondents had entered into agreements with Petitioners to regularly make contributions to the Funds and that the CBA included a provision requiring Respondents to furnish to Petitioners information and reports upon request. The arbitrator determined that Respondents failed to make the payments at issue in the Petitions and, based on the Funds' Plan Rules, awarded interest, liquidated damages, attorney's fees, audit fees, and costs, as detailed *supra*, in addition to the delinquent payments. There is no indication that the arbitration decision was made arbitrarily, exceeded the arbitrator's jurisdiction, or otherwise was contrary to law.

I have reviewed the applicable agreements as well, which were attached to the motions for default judgment. The agreements expressly state that the parties agreed to submit all disputes to binding arbitration and provide that Respondents were to pay to the Funds the contributions Petitioners seek. I thus find that Petitioners have met their burden and demonstrated that there are no material questions of fact. Neither Respondent has submitted any opposition, though they were directed to do so by October 3, 2007. Accordingly, the Arbitration Awards are confirmed.

Costs and Interest

Petitioners also seek costs⁴ incurred in connection with the confirmation proceeding, as well as interest on the delinquent contributions from the date of the Arbitration Awards through the date of judgment, pursuant to ERISA Section 502(g)(2), 29 U.S.C.

§ 1132(g)(2). Section 1132(g)(2) provides, in relevant part:

In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145⁵ of this title in which a judgment in favor of the plan is awarded, the court shall award the plan-

- (A) the unpaid contributions,
- (B) interest on the unpaid contributions,
- (C) an amount equal to the greater of--
 - (i) interest on the unpaid contributions, or
 - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
- (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

⁴ The Petitions do not request attorney's fees, but such a request is made in the supporting memoranda of law. In the Second Circuit "any attorney . . . who applies for court-ordered compensation . . . must document the application with contemporaneous time records." These records should specify, for each attorney, the date, the hours expended and the nature of the work. *New York State Ass'n for Retarded Children, Inc., v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983). Petitioners have failed to submit any such information. Thus, even if I were to treat the requests in the memoranda of law as proper, plaintiffs have not met their burden. Petitioners may renew their requests for attorney's fees upon a proper showing.

⁵ 29 U.S.C. § 1145 provides:

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

As discussed *supra*, the Funds are multiemployer plans within the meaning of ERISA and the CBA obligates employers to make contributions to the Funds.

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan . . .

Courts routinely make awards pursuant to Section 502(g)(2) in confirmation proceedings. See *Laundry, Dry Cleaning Workers and Allied Industries Health and Retirement Funds v. Wing Gong Laundry, Inc.*, 2007 WL 2363478 (S.D.N.Y. Aug. 16, 2007); *New York Dist. Council of Carpenter's Pension Fund v. American Woodcraft, Inc.*, 2003 WL 22012230 (S.D.N.Y. Aug. 1, 2003); *Trustees of Amalgamated Ins. Fund v. S&S Tailoring*, 2002 WL 44129 (S.D.N.Y. Jan. 14, 2002). Thus, costs are appropriately awarded in each of the actions for the amount of the filing fee, \$350.00.

Petitioners further request that the court award interest at the rate of 18%, pursuant to the Funds' Plans Rules and 29 U.S.C. § 1132(g)(2), on the delinquent contributions from the date of the Arbitration Awards to the date of judgment. Respondents have not objected to an award of interest or the rate. As 18% is the rate provided for by the terms of the Funds, the request is therefore granted. See *Wing Gong*, 2007 WL 2363478, at *2 (citing *Amalgamated Ins. Fund v. Alteration Co., Inc.*, 1989 WL 111066, at *2-3 (S.D.N.Y. Sept. 18, 1989) (granting interest on an arbitration award at the rate specified in the plan rules for the fund)). In *Stainless Partners*, Petitioners have calculated interest at 18% on \$4,951.58 from August 1, 2007 through October

22, 2007, the date prior to the filing of the Motions for Default Judgment, to be \$224.65. In Jung Sun Laundry Corporation, Petitioner's have calculated interest at 18% on \$33,489.79 from August 1, 2007 through October 22, 2007 to be \$1,370.78. Thus, I grant interest on the Arbitration Award in the amount of \$224.65, and against Jung Sun Laundry Corporation, I grant interest on the Arbitration Award in the amount of \$1,370.78.

Conclusion

For the reasons set forth above, the Arbitration Awards are confirmed. The motions for default judgment are denied. The Clerk is directed to transmit a copy of the within to all parties and the assigned Magistrate Judges and to enter judgment⁶ for the Petitioners, in the amount of \$6,690.64 against Stainless Partners, Inc., d/b/a/ as World Cleaners (07-CV-3542) and \$42,012.56 against Jung Sun Laundry, Inc. (07-CV-3545).

SO ORDERED.

Dated : Brooklyn, New York
October 31, 2007

By: /s/ Charles P. Sifton (electronically signed)
United States District Judge

⁶ The entry of judgment shall be stayed pending the filing by plaintiffs of a declaration averring that the applicable agreements were automatically renewed, pursuant to their terms, as defendants gave no notice that they wished to propose changes to the agreements or to terminate them, and accordingly remained in effect for the time period relevant to this case.